

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 04-10233-RCL

JONATHAN BEIJAR
Plaintiff

v.

STANLEY FASTENING SYSTEMS, L.P.
Defendant

**AFFIDAVIT OF CHRISTOPHER A. DUGGAN IN SUPPORT OF MOTION OF
STANLEY FASTENING SYSTEMS, L.P. FOR SUMMARY JUDGMENT**

I, Christopher A. Duggan, hereby depose and state as follows:

1. This affidavit is made of my personal knowledge except as to those statements based on information and belief.
2. I am an attorney with the law firm of Smith & Duggan LLP, Lincoln North, 55 Old Bedford Road, Lincoln, MA 01773, admitted to practice law before the courts of the Commonwealth and in good standing (BBO No. 544150).
3. I am a counsel of record for Stanley Fastening Systems, L.P. ("Stanley"), a party to this matter.
4. I submit this affidavit in support of the Statement of Material Facts in Support of Motion of Stanley Fastening Systems, L.P. for Summary Judgment ("Statement"), Motion of Stanley Fastening Systems, L.P. for Summary Judgment ("Motion"), and the Memorandum of Law in Support of Motion of Stanley Fastening Systems, L.P. for Summary Judgment ("Memorandum").

5. Attached at Exhibit 1 is a true and accurate copy of portions of the transcript of the deposition testimony of Wayne Pinard taken on May 17, 2004 ("Pinard Dep.") relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

6. Attached at Exhibit 2 is a true and accurate copy of the statement of David Santos, employee of Care Free Homes, Inc. ("Santos Stmt."), dated February 1, 2001, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

7. Attached at Exhibit 3 is a true and accurate copy of the statement of Ryan Cordeiro, employee of Care Free Homes, Inc. ("Cordeiro Stmt."), undated, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

8. Attached at Exhibit 4 is a true and correct copy of the Operation and Maintenance Manual for N79WW/N80SB Pneumatic Stick Nailers ("N79WW Operation Manual"), Stanley bates no. 016 Stan 000003-000004, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

9. Attached at Exhibit 5 is a true and accurate copy of portions of the transcript of the deposition testimony of Jonathan Beijar taken on April 27, 2004 ("Beijar Dep.") relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

10. Attached at Exhibit 6 is a true and accurate copy of portions of the transcript of the deposition testimony of Igor Paul taken on September 6, 2005 ("Paul Dep.") relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

11. Attached at Exhibit 7 is a true and correct copy of the Expert Report of Igor Paul ("Paul Rpt."), dated July 30, 2005, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

12. Attached at Exhibit 8 is a true and accurate copy of the plaintiff's Amended Complaint, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

13. Attached at Exhibit 9 is a true and accurate copy of relevant portions of Jonathan Beijar's Answers to Defendant's Interrogatories, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

14. Attached at Exhibit 10 is a true and accurate copy of relevant portions of Stanley's Answers to Plaintiff's Interrogatories, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

15. Attached at Exhibit 11 is a true and accurate copy of portions of the transcript of the deposition testimony of Matthew Ponko taken on October 29, 2004 ("Ponko Dep.") relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

16. Attached at Exhibit 12 is a true and correct copy of the Expert Report of Matthew Ponko with attached C.V. ("Ponko Rpt."), dated August 20, 2005, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

17. Attached at Exhibit 13 is a true and correct copy of the Expert Report of Robert Olmstead with attached C.V. and list of testimony ("Olmstead Rpt."), dated August 22, 2005, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

18. Attached at Exhibit 14 is a true and correct copy of the Citation and Notification of Penalty ("OSHA Rpt."), issued June 22, 2001, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

19. Attached at Exhibit 15 is a true and correct copy of Beijar Deposition Exhibit No. 3, a drawing of the accident scene prepared by Jonathan Beijar at his deposition, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.
20. Attached at Exhibit 16 is a true and correct copy of Pinard Deposition Exhibit Nos. 3-5, drawings of the accident scene prepared by Wayne Pinard at his deposition, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.
21. Attached at Exhibit 17 is a true and correct copy of an excerpt of Paul Deposition Exhibit No. 3, drawings of the accident scene prepared by Igor Paul prior to his deposition, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.
22. Attached at Exhibit 18 is a true and correct copy of the Stanley Fastening Systems Engineering Laboratory Test Procedure, Instructions, and Work Request Form, Test Lab No. 08815-00, Bates nos. 016 Stan 0000109 – 0000126, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.
23. Attached at Exhibit 19 is a true and correct copy of the article titled “Man shot in heart with nail gun leaves hospital after surgery,” by Cynthia McCormick and Noelle Barton, Cape Cod Times, pages A-1, A-9, February 7, 2001, relied upon by Stanley for its Motion and/or referred to by Stanley in its Statement or Memorandum.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 21st DAY OF OCTOBER, 2005.

/s/ Christopher A. Duggan
Christopher A. Duggan

CERTIFICATE OF SERVICE

The undersigned certifies service of the foregoing on October 21, 2005 in accordance with Federal Rule of Civil Procedure 5(b)(2) and United States District Court for the District of Massachusetts Electronic Case Filing Administrative Procedure § E(2) as to all parties, having appeared in this action through counsel admitted to practice before this Court, identified by the Clerk as receiving Notice of Electronic Filing.

Counsel for Defendant Stanley Fastening Systems, L.P.

/s/ David G. Braithwaite
David G. Braithwaite
BBO #634013